

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JENNIFER WENGER
339 8th STREET, NE
WASHINGTON D.C. 20002,

Plaintiff,

v.

DEPARTMENT OF JUSTICE
950 PENNSYLVANIA, AVE., N.W.
WASHINGTON, D.C. 20530

Defendant.

Civil Action No.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, challenging the failure of the Department of Justice's component the Federal Bureau of Investigation ("FBI") to adequately search for and respond to the request of Jennifer Wenger for records related to the disappearance of Ronald H. Tammen, Jr., from Fisher Hall, Miami University in Oxford Ohio on April 19, 1953

2. This case seeks declaratory relief that the Department of Justice is in violation of the FOIA, 5 U.S.C. §§ 552(a) and (b), for failing to respond to plaintiff's request for records and injunctive relief ordering defendant to search for and process immediately the requested records in their entirety.

JURISDICTION AND VENUE

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the Department of Justice pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also

has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

PARTIES

4. Plaintiff Jennifer Wenger is a citizen of the District of Columbia. Ms. Wenger is a writer currently working on a book about the disappearance of Ronald Tammen in 1953. This is Ms. Wenger's first book.

5. Defendant Department of Justice is an agency within the meaning of 5 U.S.C. § 552(f) and 5 U.S.C. § 702. The Department of Justice is the federal agency with possession and control of the requested records and is responsible for fulfilling plaintiff's FOIA request. The FBI is a component of the Department of Justice.

STATUTORY FRAMEWORK

The Freedom of Information Act

6. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.

7. An agency must respond to a party making a FOIA request within 20 working days, notifying that party of at least the agency's determination whether or not to fulfill the request and of the requester's right to appeal the agency's determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

8. In "unusual circumstances," an agency may delay its response to a FOIA request or appeal, but must provide notice and "the date on which a determination is expected to be dispatched." 5 U.S.C. § 552(a)(6)(B). Any such delay may not exceed an additional ten working days beyond the initial 20-working-day period mandated by the FOIA. Id.

9. An agency must produce all responsive records except to the extent they, or any portion thereof, fall into one of nine specified exemptions. 5 U.S.C. § 552(b).

10. This Court has jurisdiction, upon receipt of a complaint, “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B).

FACTS UNDERLYING PLAINTIFF’S PRAYER FOR RELIEF

11. On April 19, 1953, Ronald H. Tammen, Jr., disappeared from his dormitory in Fisher Hall at Miami University in Oxford, Ohio. The FBI opened a Missing Person file on the disappearance. However, Mr. Tammen has never been located.

12. Plaintiff Jennifer Wenger is currently researching a book on Mr. Tammen’s disappearance. As part of her investigation, Ms. Wenger has pursued the FOIA and other Open Record laws to locate material on Mr. Tammen’s disappearance.

Plaintiff’s FOIA Request

13. On April 22, 2010, plaintiff submitted a FOIA request form by the FBI’s electronic request portal for all records concerning the FBI’s investigation of the Ronald H. Tammen, Jr., disappearance from Fisher Hall, Miami University, Oxford, Ohio, on April 19, 1953.

14. By letter dated May 4, 2010, the FBI acknowledged plaintiff’s request and assigned it FOIPA Request No. 1147525-000.

15. By letter dated August 2, 2010, the FBI advised that the request was currently being reviewed by an analyst.

16. By letter dated November 2, 2010, the FBI advised that the request was still being reviewed by an analyst.

17. By letter dated December 21, 2010, the FBI released 23 pages of responsive material. Certain information was redacted pursuant to FOIA Exemptions 6 and 7(C).

18. By electronic mail dated January 19, 2011, plaintiff submitted three (3) FOIA requests to the FBI pertaining to Ronald Henry Tammen, Jr.. The first request sought material in FBI #358-406-B. The second request sought all material found in FBI file #79-31966. The third request sought material found in FBI file #25-381754. All of these requests were for the book Ms. Wenger is writing on the disappearance of Mr. Tammen.

19. By letter dated January 21, 2011, the FBI responded to plaintiff's January 19, 2011 requests. These three (3) requests were aggregated and given FOIPA No. 1160335-000. The FBI advised plaintiff that File Numbers 25-HQ-3817454, 25-CI-14261, and 25-CV-14170 had been destroyed on February 1, 1997, October 14, 1964 and an unknown date, respectively. The FBI also advised plaintiff that File Number 79-HQ-31966 was previously provided to her on December 21, 2010 and that FBI #358-406-B is Mr. Tammen's criminal identification number, not an FBI file number.

20. By letter dated January 24, 2011, plaintiff appealed the FBI's actions of December 21, 2010 and January 21, 2010 to the Department of Justice's Office of Information Policy ("OIP"). Plaintiff's appeal concerned the fact that there should be additional documents concerning the investigation; including a document signed by J. Edgar Hoover instructing agents to stop searching for Mr. Tammen.

21. By letters dated February 16, 2011, the June 20, 2011, OIP acknowledged receipt of plaintiff's appeals assigned them Appeal Numbers AP-2011-01083 and AP-2011-01084.

22. By letter dated August 4, 2011, OIP remanded plaintiff's first request of April 22, 2010 (Request No. 1147525) back to the FBI for the processing of additional records. OIP affirmed the remaining actions of the FBI's on the two requests.

23. By letter dated April 9, 2011, plaintiff made a request to the FBI for records concerning Lyndal Ashby, William Arnold and Raymond Harris. All three were missing persons who disappeared in the Midwest.

24. By letter dated April 14, 2011, the FBI assigned the request for records on the investigation of the disappearance of William Arnold FOIPA Request No. 1164555. The FBI further stated that as plaintiff requested records concerning a third party these records are exempt from the FOIA without an express authorization and consent of the third party, proof that the subject of the request is deceased or a clear demonstration that the public interest in disclosure outweigh the personal privacy interest and that significant public benefit would result from the disclosure of the requested records. The FBI exempted these records from disclosure pursuant to FOIA Exemptions 6 and 7(C).

25. By letter dated April 14, 2011, the FBI assigned the request for records on the investigation of the disappearance of Raymond Harris FOIPA Request No. 1164556. The FBI further stated that as plaintiff requested records concerning a third party these records are exempt from the FOIA without an express authorization and consent of the third party, proof that the subject of the request is deceased or a clear demonstration that the public interest in disclosure outweigh the personal privacy interest and that significant public benefit would result from the disclosure of the requested records. The FBI exempted these records from disclosure pursuant to FOIA Exemptions 6 and 7(C).

26. By letter dated April 20, 2011, plaintiff appealed the FBI's actions on FOIPA requests No. 1164555-000 and No. 1164556-000.

27. By letter dated May 2, 2011, OIP acknowledged plaintiff's appeals on FOIPA requests No. 1164555-000 and No. 1164556-000. OIP assigned Appeal No. AP-2011-01813 to Request No. 116455 and Appeal No. AP-2011001814 to Request No. 1164556.

28. By letter dated May 3, 2011, the FBI acknowledged plaintiff's April 9, 2011 request for records on Lyndal Ashby and assigned it FOIPA Request No. 1154553-000.

29. By letter dated May 31, 2011, the FBI released eight (8) pages of responsive records concerning the disappearance of Lyndal Ashby on FOIPA Request No. 1154553-000. Certain information on these pages was withheld pursuant to FOIA Exemptions 6 and 7(C).

30. By letter dated September 6, 2011, OIP affirmed the FBI's action on plaintiff's request for material pertaining to William Arnold (FOIPA Request No. 1164555).

31. By letter dated September 6, 2011, OIP affirmed the FBI's action on plaintiff's request for material pertaining to Raymond Harris (FOIPA Request No. 1164556).

32. By letter dated June 21, 2011, the FBI released nine (9) additional pages pertaining to the disappearance of Ronald Tammen. Certain information was withheld pursuant to FOIA Exemptions 6 and 7(C).

33. By letter dated September 10, 2011, plaintiff sought mediation of her request from the Office of Government Information Services ("OGIS"). Ms. Wenger's letter sought assistance in the locating and processing of additional records concerning Tammen's disappearance as well as records on William Arnold and Raymond Harris.

34. By letter dated September 20, 2011, OGIS acknowledged plaintiff's facilitation request and sent her an authorization form, which she immediately signed and returned.

35. By email dated October 4, 2011, Karen Finnegan of OGIS provided plaintiff with information about her request. Ms. Finnegan stated, among other things, that pursuant to a conversation with FBI FOIA Public Liaison Dennis Argall she learned that “[t]he FBI released information pertaining to Mr. Tammen because over the years the FBI had contact with his family who indicated that they believed Mr. Tammen to be deceased given some suspicious facts, namely, that **after his disappearance a fish was found in his college bed.**”

36. Plaintiff had not received any documents from the FBI about this incident and because she had knowledge that it was a prank, did not feel that it was exempt from disclosure, according to the law. In order to make sure that she covered every possible situation, plaintiff, by e-mail dated January 18, 2012, to the FBI, requested all the files from the Cincinnati and Cleveland Field Offices concerning the disappearance of Mr. Tammen. This was to make sure that the FBI had searched those offices in her previous requests as the correspondence for those requests did not indicate what offices the FBI searched for responsive records.

37. By letter dated January 18, 2012, the Chief Division Counsel for the FBI’s Cleveland Field Office informed plaintiff that all FOIPA requests are now processed through the FBI central location in Winchester, Virginia and that office would soon contact her concerning her request.

38. By letter dated January 20, 2012, the FBI assigned FOIPA Request No. 1180818-000 to plaintiff’s request and indicated that no records could be located.

39. By letter dated January 26, 2012, the FBI assigned FOIA Request No. 1180815-000 to plaintiff’s request for Cincinnati and Cleveland Field Office files.

40. By letter dated January 26, 2012, the FBI stated that they had previously advised plaintiff that Cincinnati Field Office file 25-CI-14261 and Cleveland Field Office file 25-CV-

14170 had been destroyed. The FBI further advised plaintiff that no further records responsive to her request could be located.

41. By email to the FBI dated January 29, 2012, plaintiff asked the FBI about the “fish in the bed comment.” Plaintiff sought the records of the FBI that contained this information in light of the fact that plaintiff was aware that an actual fish was found in Mr. Tammen’s bed after his disappearance.

42. On February 15, 2012, FOIA Public Liaison Dennis Argall contacted plaintiff. Mr. Argall stated that his fish statement to OGIS was meant as a joke and there is nothing concerning the fish in the FBI files.

43. In May of 2012, Ms. Wenger received documents from the Butler County (Ohio) Sherriff’s Office. Included in these documents was one from the FBI dated February 28, 2008. This document was not included in the FBI’s release of documents to Ms. Wenger. The February 28, 2008 document is attached as Exhibit 1.

PLAINTIFF’S CLAIMS FOR RELIEF

CLAIM ONE **(Failure to Produce Records)**

44. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

45. Plaintiff properly asked for records within the custody and control of the FBI.

46. Plaintiff is entitled by law to access to the records requested under the FOIA, unless defendant makes an explicit and justified statutory exemption claim.

47. Plaintiff has exhausted administrative remedies with respect to the FBI’s wrongful withholding of the requested records.

48. Plaintiff is entitled to injunctive and declaratory relief with respect to the release and disclosure of the requested documents.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests that this Court:

- (1) Issue a declaration that defendant FBI has violated the FOIA by failing to lawfully satisfy plaintiff's FOIA request of June 13, 2011;
- (2) Order defendant FBI to search for and process immediately the requested records in their entirety at no cost to plaintiff;
- (3) Order defendant FBI upon completion of such processing to disclose the requested records and make copies available to plaintiff at no cost to plaintiff;
- (4) Award plaintiff reasonable attorney fees and litigation costs in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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Dated: July 17, 2012

Attorney for Plaintiff

Exhibit 1

Wenger v. Department
of Justice

TOTAL P.001

FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE
CLARKSBURG, WV

FACSIMILE COVER SHEET

Date: Thursday, February 28, 2008



TO:
SHERIFF'S OFFICE
HAMILTON, OH
ATTN:
SPECIALIST FJ SMITH

FROM: DCFBIWAD2
FBI
SPECIAL PROCESSING CENTER - MODULE E-2
1000 CUSTER HOLLOW ROAD
CLARKSBURG, WV 26306

PHONE: 304-625-5584 (24 HOUR - VOICE)
304-625-5587 (24 HOUR - AUTO FAX)

NUMBER OF PAGES INCLUDING COVER SHEET:

SUBJECT: TAMMEN, RONALD HENRY

COMMENTS - SPECIAL INSTRUCTIONS:

A SEARCH OF OUR CRIMINAL AND CIVIL FILES HAS FAILED TO REVEAL ANY FINGERPRINTS FOR YOUR SUBJECT. A COMPLETE SEARCH OF OUR ARCHIVE MICROFILM FILES HAS FAILED TO REVEAL ANY FINGERPRINTS FOR THIS MISSING SUBJECT AS WELL.

AUTHORIZATION: KJD/JLW/CTPE

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